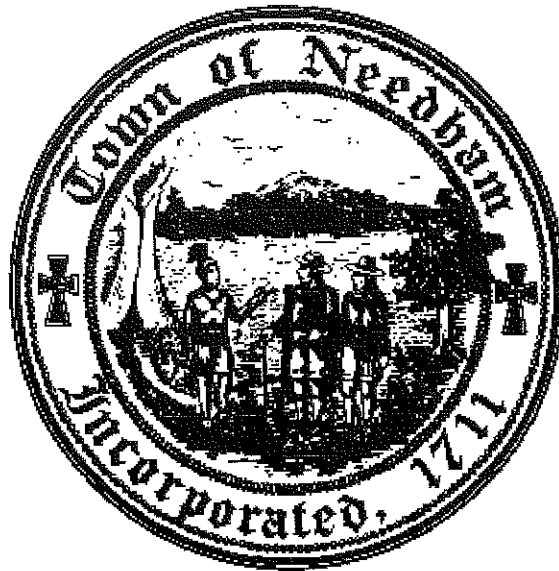


TOWN OF NEEDHAM

MASSACHUSETTS

NEEDHAM TOWN MEETING HANDBOOK



**MICHAEL K. FEE
TOWN MODERATOR**

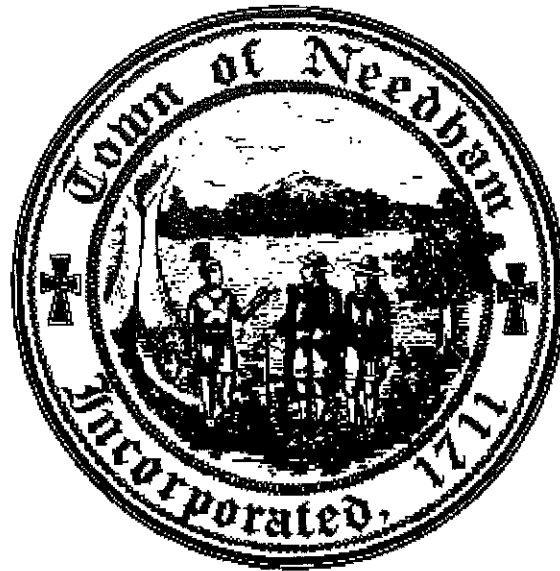
3/99

**THE PRINTING OF THIS REVISED DOCUMENT WAS FUNDED BY
THE RICHARD PATTON MELICK FOUNDATION, INC.**

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Introduction

In 1961, the Needham League of Women Voters published a booklet entitled "A Guide for Town Meeting Members." The Guide was revised once in March of 1967. The League has supplemented the Guide in more recent years with a very useful brochure entitled "Guide to Town Meeting." As a public service, the League has continued to distribute this brochure to newly elected Town Meeting Members.

One of my goals as Moderator was to update the resources that are available to Town Meeting Members to help each and every one become an effective and informed representative of their precinct. After discussing the matter with numerous Town Meeting Members, I became convinced that one useful step would be the production of a handbook for Town Meeting Members that would contain some practical information about our representative town meeting's history and rules.

The *Needham Town Meeting Handbook* is my attempt to collect in one source a summary of information that may prove helpful to our Town Meeting Members. Town Meeting is such a fascinating and rich institution that it probably warrants its own textbook rather than a mere handbook. Nonetheless, it is my belief based upon the experience in other towns, that a brief handbook can provide the essential information that an informed Town Meeting Member should possess.

The *Handbook* is a guidebook. It is not a legal document and the contents of the book are not in any way intended to have any force or effect of law, or be legally binding. The *Handbook* is designed simply provide guidance to Town Meeting Members and other citizens about the institution we convene at least twice a year to decide the most important issues facing our town.

I welcome your suggestions and comments to improve this *Handbook* in the future.

Michael K. Fee

Town Moderator

November, 1998

Acknowledgments

As is the case with any worthwhile project, many parties contributed to this endeavor. I would like to acknowledge the assistance of my partner Henry L. Hall, Jr., Moderator of the Town of Belmont and President of the Massachusetts Moderator's Association (1998-1999). Henry has provided me with invaluable guidance and the highly successful *Belmont Town Meeting Handbook* that he authored provided the framework for this document.

In May 1998, I distributed drafts of the *Handbook* to newly elected Town Meeting Members with the gracious assistance of the Needham League of Women Voters. I asked these Town Meeting Members to act as a focus group for the draft and provide me with their comments and suggestions. Several Town Meeting Members provided extremely useful suggestions and I thank them.

Two individuals well known to Needhamites contributed greatly to this *Handbook*. First, my predecessor Richard P. Melick reviewed the draft and provided extensive and detailed comments to me. Words cannot express the respect I have for our long-serving Moderator. Moreover, I am most grateful for the time he took to carefully review my draft and contribute to the completion of this project. Second, Mr. James Hugh Powers, our longest serving Town Meeting Member, contributed greatly to this draft and as you will see, authored a section on doing one's "homework" for Town Meeting. Mr. Powers was acknowledged as a material contributor to the 1967 revision of the League of Women Voters' Guide for Town Meeting Members and I am privileged to have had the benefit of his input on this 1998 *Handbook*.

As always the Needham League of Women Voters was very supportive of this endeavor and they continue to be the primary source for excellent voter and Town Meeting Member education initiatives.

Finally, the Richard Patton Melick Foundation has supported this project from the outset and kindly agreed to fund the publication of the *Handbook*. In only a few short years, this vibrant organization has contributed greatly to our town and I am most grateful that they have chosen to include this project among the many admirable endeavors they have launched to demonstrate the importance of public service and citizenship in Needham.

M.K.F.

NEEDHAM TOWN MEETING HANDBOOK

I. THE NEEDHAM REPRESENTATIVE TOWN MEETING

Since the days of Colonial America, New Englanders have been proud to be identified with one of the purest forms of democracy: the New England Town Meeting. Indeed, the Town Meeting concept, simply stated as citizens of a town gathering at a meeting place to discuss, debate and decide important issues that affect their community, such as setting appropriations and enacting legislation, served as inspiration for the founders of the United States of America, many of whom had been steeped in the participatory democracy that thrived in New England. In fact, because New England town meetings were always a forum for free speech and debate, the Supreme Judicial Court of Massachusetts once called Massachusetts towns the "tap spring" of the American Revolution.

All over our country and throughout the world, the New England Town Meeting serves as a model of democracy. Most recently, what have been referred to as "Town Meetings" have been held by presidential candidates and others who seek to stimulate discussion about everything from issues in a campaign, to international trade agreements, to race relations in America. In South America, countries emerging from military rule and in Eastern European countries who have rid themselves of communism, "Town Meetings" have been held to demonstrate the freedom enjoyed by ordinary citizens and prove that every person's opinion is important and should be heard.

In Massachusetts, Town Meeting has continued to be the forum through which towns govern themselves. Town Meetings in Massachusetts are either open or representative. Any town in the Commonwealth with a population of at least 6,000 may petition the General Court for authority to adopt a representative form of town meeting. In 1933, the Town of Needham adopted a form of representative Town Meeting. Under our Town Charter, the elected composition of Needham's Town Meeting is to be not more than 252 members. Town Charter ("T.C.") at Part 2, Sec. 6. These members are elected from the ten Precincts (A-J) into which Needham has been divided. T.C. Part 2, Sec. 5. The members are allocated to the town's precincts in accordance with the constitutional principle of "one man, one vote." Accordingly, the Board of Selectmen must redistrict the town at ten-year intervals in conjunction with the national census. The population must be as evenly distributed as possible throughout the precincts with no precinct having more than 4,000 citizens. The members elected from each precinct serve staggered three-year terms. Each precinct's elected Town Meeting Members are listed in the back of the Annual Report.

Approximately one third of the Town Meeting's membership are elected each year during the Annual Town Election, which, under our General By-Laws ("By Laws"), occurs on the second Monday of April each year. By-Laws Sec. 1.1.1. In order to be listed on the

ballot, candidates need only obtain the signatures of ten registered voters from their precinct and file the signatures with the Town Clerk who will pass them on to the Board of Registrars. Candidates for reelection need only return a letter of intent that is sent to them by the Town Clerk in order to be listed on the ballot as a candidate for reelection. T.C. Part 2, Sec. 8.

In addition to those elected as Town Meeting Members, the Town Charter provides for certain Town Meeting Members at large, namely, any member of the General Court whose district is entirely within the town of Needham, the Moderator, the Town Clerk, the Selectmen, the chairpersons of each other elected board of the town, except the housing authority and the commissioners of trust funds. T.C. Part 2, Sec. 7. A Town Meeting Member at Large may have membership conferred simultaneously through election from a precinct and by being one of the designated town officers or chairpersons, but only one vote may be cast at the meeting.

It is important to remember that Town Meeting Members have a dual representative responsibility. On the one hand, each member represents the interests of her constituents in the precinct from which she hails. On the other hand, each member must always consider the well-being of the Town of Needham as a whole when matters come before the meeting. Moreover, because they are representatives, Town Meeting Members must be ever mindful of their duty to attend Town Meeting faithfully. Each time a Town Meeting Member fails to attend a session or fails to vote on an issue, he is depriving the residents of his precinct of the equality of representation to which they are constitutionally entitled.

II. THE WARRANT

The By-Laws of the Town of Needham provide for the legislative business of the Annual Meeting to be held on the first Monday of May. The Meeting customarily begins its business at 7:30 p.m. If all the business of the meeting is not concluded on the first evening session, the meeting is adjourned until the next following Wednesday and Monday. Thereafter, the selection of evenings is at the pleasure of the Town Meeting Members, but it has been customary to continue with a consecutive Wednesday, Monday, Wednesday until the business of their meeting is completed, unless a holiday or other special event arises. See By-Laws Sec.1.1.1.

The Annual Town Meeting, as well as any Special Town Meeting, is called by a Warrant stating the time and place of the holding of the Meeting and the subjects to be acted upon. The Warrant is an important legal document that essentially serves as an agenda. Unless a subject is included as one of the numbered sections in the Warrant called "articles," it cannot be discussed. The only exception to this rule is the "Omnibus Article" which appears at the end of the Annual Town Meeting Warrant which provides that it shall be used to act upon any business coming before the meeting or appoint study committees. Because of its breadth, many towns have abandoned the Omnibus Article. By custom, Needham has restricted the use of the Omnibus Article to correcting unanimously agreed upon honest mistakes or omissions in

a previous article to avoid reopening the article, appointing study committees, acknowledging citizens' good works, or applauding the accomplishments of an athletic team.

Sections 1.2 and 1.3 of the General By-Laws require the Town Clerk to mail notice of the Warrant to the Town Meeting Members and require the Warrant to be mailed or delivered to each place of residence in the Town. Copies of the Warrant are also posted in the various places around Town and summaries appear in local newspapers. In Needham, the Warrant and Annual Town Report are hand-delivered to each household by community service volunteers.

Since 1951, Annual Town Meeting Warrants have included as few as 40 articles (1976) to as many as 137 (1952), with most Warrants ranging from 45 to 79 Articles in length. No Special Town Meeting Warrant during the same period contained more than 27 Articles and most contained fewer than 10. Traditionally, the business of a fall Special Town Meeting has been limited to one session.

A. Insertion of Articles of Warrant

Preparation of the Warrant for the Town Meeting (both Annual and Special) is the responsibility of the Board of Selectmen. An article may be inserted in the Warrant by the Selectman, frequently acting at the request of a Town official, or by petition of a required number of voters.

If a citizen wishes to place an Article in the Warrant for the Annual Town Meeting, he or she can simply write out the Article, have ten or more registered voters of the Town tender a written request for its insertion and submit it to the Board of Selectmen who act as the Warrant Committee. Placement of an article in the Warrant for a Special Town Meeting requires must be supported by the signatures of at least 100 registered voters. (Mass. Gen. Laws ("G.L.") c.39, § 10.)

Anyone wanting to insert an article in the Warrant may obtain the closing date of the Warrant from the Town Clerk. The closing date is variable and is established by the Selectmen. For an Annual Town Meeting to be held in May, however, the closing date is usually in or around the first week of February. Any person who wishes to submit an article for inclusion in the Warrant would be wise to consult the Town Counsel concerning the proper legal wording of the Article he or she wishes to insert and also consult with the Moderator for procedural issues. Town Counsel may be reached through the Selectmen's office.

The Selectmen are required to call a Special Town Meeting upon the request of 200 registered voters, such meeting to be held not later than 45 days after the receipt of such request. (G.L. c.39, § 10.)

B. Role of the Finance Committee

Section 1.12 of our By-Laws, as amended, provides: "[a]ll Articles of the Warrant calling for appropriations shall be referred to this committee. It shall examine and study the budgets submitted by various Town departments; shall, from time to time throughout the fiscal year, inquire into the expenditures and commitments of each department; and shall immediately report to the Selectmen whenever the expenditures of any department are exceeding or are likely to exceed its appropriations." The By-Law also provides that "[t]he Committee shall have access to all facts, figures, records, and other information relating to all Town departments, boards, committees or officers; and such information shall be furnished immediately by any department, board, committee, officer or employee when requested by the Committee.

Under Massachusetts law, the Finance Committee is obligated to submit a budget to the Annual Town Meeting. G.L. c. 39, sec. 16. Accordingly, our By-Laws provide that "[t]he Finance Committee shall have access to all facts, figures, records and other information relating to all Town departments, boards, committees or officers; and such information shall be furnished immediately by any department, board, committee, officer or employee when requested by the Committee. By-Laws Sec. 1.12.2. The Finance Committee thereafter is required to report "in print or otherwise" to the Town Meeting Members. Accordingly, the Finance Committee proposes the Operating Budget for the Town in the Warrant and provides a recommendation on all Articles that have any fiscal impact.

The Finance Committee is comprised of nine registered voters who cannot be Town officers, agents or employees. By-Laws Sec. 1.12.1. They may be Town Meeting Members. The members of the Finance Committee are appointed for staggered three-year terms by the Moderator. Because it is not composed of any Town officials, agents or employees and is appointed by the Moderator, the Finance Committee functions as an extension of Town Meeting, and serves as a year-round "fiscal watchdog."

C. Other Standing Committees

In addition to the Finance Committee, the Town Meeting, like the state legislature or Congress, relies upon other committees which consider and report to the Town Meeting on legislative matters. For example, the Personnel Board, comprised of five members who are appointed by the Moderator, reviews proposals to revise the salaries and job classifications for town employees, other than school department employees. The Personnel Board also reviews collective bargaining agreements and recommends to Town Meeting their acceptance or rejection. Another standing committee from which Town Meeting Members receive reports is the Planning Board. The members of the Planning Board are elected in the town election. The Planning Board presents Articles concerning zoning to Town Meeting and advises Town Meeting on zoning issues. Zoning is usually an important part of every Annual Town Meeting

III. ADMISSION TO FLOOR AND RIGHT TO SPEAK

The Town Meeting held in Needham is, as was discussed above, a representative town meeting. Accordingly, only elected Town Meeting Members are entitled to be seated in that portion of the meeting place which is reserved for Town Meeting Members. In Needham, this area is usually a designated number of rows in the auditorium that are marked with batons. Others may be admitted by invitation of the Town Meeting or the Moderator as guests of the Moderator.

It is the custom in Needham for Committee Chairpersons, who expect matters to come before the Meeting of interest to their respective committees, to request that those members of their Committees who are not Town Meeting Members be admitted to the floor. Persons who are not Town Meeting Members are, of course, not entitled to vote. Other voters of the Town may attend as spectators but they are not admitted to the area reserved for Town Meeting Members. Non-Needham voters and non-residents may attend as well, but only as guests of the Moderator. The Town Meetings have traditionally been televised live on Needham Cable Television, subject to rules established by the Moderator.

The Charter provides, "all town meetings shall be open to the public and the press, and, subject to such conditions as may be determined from time to time by the representative town meeting, any voter who is not a town meeting member may speak at any representative town meeting, but shall not vote." T.C. Part 2, Sec. 11. In Needham, the procedure for recognizing a registered voter who is not a Town Meeting member involves the non-member first rising and seeking recognition from the Chair as described below in Section IV C. When recognized, the resident must speak using the microphone, cannot make a motion, but she may request that a Town meeting Member make a motion on her behalf. If the registered voter knows that she will be speaking at the meeting, it is most advisable for that person to advise the Moderator in advance so that when the person rises to be recognized, the Chair will be prepared to recognize the speaker. Of course, precisely when the voter chooses to rise is the responsibility of the voter and cannot become that of the Moderator. Moreover, all speakers must conduct themselves in accordance with the established rules, including those adopted by the meeting.

Often there are several boards or committees that wish to address a motion. To avoid confusion and ensure an orderly and rational presentation of facts to Town Meeting Members, the chairmen of these boards and committees will agree on a speaking order. The group must also confer with the Moderator who may suggest a different order. Once an order is agreed upon, the Moderator will announce the order and recognize the speakers in that order. This tradition in Needham is simply a matter of convenience and constitutes an attempt to present information from Town boards and committees to the Meeting in a rational order and help frame issues for debate. Occasionally, some may mistakenly believe that this process is constitutes a "sign up" system, but it is not so. Even if boards and committees wish to address

a motion, the proponent of the main motion, as stated in the Warrant, is always recognized first by the Chair.

Frequently a citizen who is particularly interested in an article in the Warrant, such as an article to amend a zoning bylaw affecting the citizen's property, will engage an attorney to represent him or her. Such an attorney is, as a matter of courtesy, generally allowed to address the Meeting on behalf of that citizen.

IV. ORDER OF BUSINESS AND PROCEDURE

The procedure at a Town Meeting is governed by the rules and regulations stemming from the General Laws of The Commonwealth of Massachusetts (particularly Chapter 39), the Needham Town Charter, the By-Laws of the Town of Needham, *Town Meeting Time*, by Johnson, Trustman & Wadsworth, as well as custom and tradition.

Before a Town Meeting begins, the Moderator is informed of the number of Town Meeting Members present and determines that there is a quorum. Our Charter provides that "[a] majority of the town meeting members shall constitute a quorum for transacting business, but a lesser number may organize temporarily and may adjourn from time to time." T.C. Part 2, Sec. 11.

The Moderator, after ascertaining that a quorum is present, calls the meeting to order. The Moderator then defines the limits of the hall and announces any planned recesses. Usually on the first evening session, there is an opening ceremony that includes respect for the flag, an invocation delivered by a member of the Needham Clergy Association and sometimes a brief special music or dramatic program.

After pointing out the presence of pages who will provide portable microphones to those who are recognized to speak, the Moderator seeks the unanimous consent of the Town Meeting Members to waive a complete reading of the Warrant. Upon receiving unanimous consent, the Moderator will ask the Town Clerk to read the Call to Meeting contained in the Warrant and the officer's Return of the Warrant. If there is no objection, the Town Clerk will read the Call to Meeting and return of service of the Warrant without reading each printed Article.

Next, the Moderator asks newly elected and reelected Town Meeting Members to rise and be sworn by the Town Clerk. The Town Clerk administers the oath of office to those who have not previously been sworn.

The Moderator then usually makes a statement regarding procedure. This is an important part in the Meeting. The Moderator explains that any speaker who refers to personalities or engages in a personal attack will be ruled out of order. The Members are instructed to rise and seek recognition from the Moderator and once recognized, clearly state

their name and precinct. Time limits on presentations by speakers are enacted by the Meeting as well as Needham's traditional rule on amendments to the Operating Budget Article. Needham's Town Meeting has usually decrees that a motion to increase the amount of funding on any particular line item in the budget must be accompanied by the identification of which other line item(s) will be reduced to fund the increase.

Following some additional announcements that usually are public service announcements or special recognition, the Moderator moves to the Articles. The first order of business is to bring to the Meeting's attention any changes in the Main Affirmative Motions that have been submitted under the Articles. These changes may include changes in the amounts of the requested appropriations. In addition, the Moderator usually announces the Articles in which the proponents no longer have any interest and wish withdrawn. Because no motions for any such Articles have been placed on the floor, by unanimous consent, such a Articles may be withdrawn. In addition, the Moderator usually announces at this time any Articles about which he has been informed will be the subject of a motion to refer back for further study.

A. Consideration of Articles

After these acts, it has long been the custom in Needham for the Moderator to read in numerical sequence the Articles in the Warrant, pausing a moment after each announcement to see whether the subject matter of the Article will be subject to debate. If the Moderator hears "question," "debate" or some similar word after the reading of an Article's number, the Article will be deemed controversial and set down for debate and discussion. Those Articles for which there is no call for debate are deemed noncontroversial Articles and, based upon the Main Affirmative Motions previously filed, are voted unanimously and enacted. This process is based in theory on the assumption that the Main Affirmative Motion that was on file at the Office of the Town Clerk at least one week prior to the meeting have been reviewed by Town Meeting Members. Nonetheless, this process underscores the importance of Town Meeting Members reading the Warrant well in advance of the Meeting and becoming informed about the Articles.

Controversial Articles are then taken up in numerical sequence, unless a motion is made to change the order of presentation and consideration. For example, a proponent of a series of related Articles may move that the Articles be discussed together, but voted on separately. If this motion passes by a majority vote, the traditional rule that limits discussion to the subject matter within the "four corners" of any specific Article is not applicable and discussion may relate to the Articles that have been combined. In addition, a Member may move to postpone consideration of an Article until after action has been taken on another Article, which requires a simple majority for passage. To advance an Article requires the Meeting's unanimous consent.

B. Presenting of Motions

In Needham, those responsible for the insertion of an article in the Warrant prepare, with the assistance of the Town Counsel, written motions for the articles in which they are interested. The Moderator is apprised in advance of the Town Meeting of these motions which are known as Main Affirmative Motions. These Motions are "affirmative" in that they ask the Meeting to do something rather than not do something. When this procedure has been followed, the motions so prepared have been carefully and well worded and determined to be within the scope of the articles involved, subject of course to the additional approval of the Moderator. This practice has resulted in saving the Town Meeting valuable time which can be devoted to worthwhile debate.

As each article is taken up, the Moderator, having been informed in advance as to the person who will present the motion, recognizes that person. Since it has been ascertained that all Town Meeting Members have copies of the Warrant, the articles in the Warrant are announced usually in numerical sequence by the Moderator as they are taken up, although some additional description may be given by the Moderator. Customarily, the Moderator also recognizes a member of the Finance Committee on each Article that has any fiscal impact. Ordinarily, only after the proponent and the Finance Committee have had an opportunity to speak to an Article is general discussion on the motion in order.

C. Discussion and Debate

If a Town Meeting Member wishes to speak, the Member stands up, and in a voice that can be heard says, "Mr. Moderator." When he or she is recognized, the Member should state his or her name and precinct. The Member is then said to have "obtained the floor." During debate, a speaker will be required to address the chair, i.e. the Moderator, first, and questions may be asked only through the Chair. The Moderator cannot lose control of the Meeting by permitting a debate or a dialogue to develop between a speaker who has the floor and a Member who has been recognized for the purpose of asking a question of that speaker. Indeed, our By-Laws provide that "[t]he Moderator may direct to any person in the hall a specific request by a Town Meeting Member for information pertaining to a question under consideration." By-Laws, Sec. 1.5. Under the "four corners" rule, the debate must be confined to the subject matter of the Article under consideration. Any person must cease speaking and yield the floor at the Moderator's request.

It has always been considered good form that a Town Meeting Member not conclude a speech by offering a motion. A speaker should announce his or her intentions clearly and thus, the motion should precede the discussion so that Town Meeting Members may consider the speaker's remarks in context. Furthermore, under our By-Laws a speaker may not conclude a speech on the merits of any Article with a motion that will terminate or limit debate, such as a motion to move the previous question, or to lay on the table. By-Laws, Sec. 1.6.

D. The Role of the Moderator and the Vote on Motions

The Moderator by status (G.L. c. 39, § 15) is in charge of the conduct of a Town Meeting and "decides all questions of order." Needham's Moderator is elected annually. Any vacancy in that office may be filled by the Town Meeting Members at a meeting duly called for that purpose. If the Moderator is absent from a Town Meeting, a Moderator *pro-tempore* may be elected by the Town Meeting Members. T.C. Part 3, Sec. 18. The Moderator is given broad powers under Massachusetts and Needham laws. Because of these broad powers given by these statutes, there is no appeal from the rulings of the Moderator on issues of procedure or order.

Massachusetts law, G.L. c. 39, sec. 15, provides that in a representative town meeting, votes shall not be taken by secret ballot unless two-thirds of the Town Meeting so votes. Accordingly, votes are customarily taken by voice vote and when the Moderator is in doubt, a vote by division, usually a vote by a show of hands canted by sworn tellers, is taken. Under our By-laws, a roll call vote may be taken only in three situations:

- (1) when requested by twenty-five Town Meeting Members present, immediately following a voice vote or standing vote;
- (2) whenever such a roll call on the pending question is ordered by affirmative vote of a majority of Town Meeting Members present and voting; and
- (3) whenever such a roll call is deemed necessary by the Moderator in the fulfillment of the duties of his office.

If a roll call vote is so requested, the Town Clerk shall record the "yes" and "no" votes so as to indicate the individual vote of each Town Meeting Member who shall have voted. A Town Meeting Member who votes "yes" or "no" can change the vote cast before the last vote tally is stated, but a Town Meeting member who has voted "present" or who has been marked "absent" cannot change his vote because there is no stated vote to change. The record compiled by the town Clerk shall be made available to the public at the Office of the Town Clerk and shall be printed in the Town Report.

Since there is no provision in the By-Laws for a recount if there is doubt concerning a voice vote or standing vote, we have to resort to the General Laws to determine what should be done if such vote is questioned. Mass. G.L. c. 39, § 15 requires the Moderator to verify the vote declared if it is "immediately questioned by seven or more voters."

The vote required to pass a main motion depends on substantive law. As a rule, it is a majority of those present and voting on the question, but there are many instances where a statute requires some other proportion, such as two-thirds, four-fifths or even nine-tenths.

Some motions require a two-thirds, four-fifths or nine-tenths vote by statute, and some require a two-thirds vote by parliamentary procedure.

Under G.L. c.39, § 15, it is provided, "...if a two-thirds, four-fifths, or nine-tenths vote of a Town Meeting is required by statute, the count shall be taken, and the vote shall be recorded in the records by the Clerk; but if the vote is unanimous, a count need not be taken, and the Clerk shall record the vote as unanimous." In 1997, the Legislature amended the statute to state that in the case of a two-thirds vote, "a town may decide by by-law or vote not to take a count and record the vote if a two thirds vote is required by statute...." Accordingly, at the 1998 Annual Town Meeting, Needham adopted a By-Law, By-Laws Sec. 1.4.1, that allows the Moderator to declare the presence of a two-thirds vote on a voice vote when the voting is non-unanimous.

Where a two-thirds vote is required merely by parliamentary procedure (for example, motion for the previous question), no statutory obligation exists and the Moderator must only be satisfied that two-thirds are in favor of a motion. This is illustrative of the fact that rules of parliamentary procedure are procedural rather than substantive, and that a merely procedural error is not likely to nullify the action of the Town Meeting. Any vote on a main motion under an article is one of substance.

The Moderator is advised by Town Counsel as to the legal requirements of votes on the articles, whether a mere majority, or otherwise, but if the issue is simply procedural, the matter is decided solely by the Moderator. As in the question of scope, however, it is the Moderator's ultimate responsibility to ascertain the requirements of a vote.

The Moderator in Needham, being a Town Meeting Member at large by virtue of the office, is entitled to vote; but there are only two instances where it is necessary for the Moderator to vote. He or she may vote to break a tie, and, if a motion he or she opposed would otherwise carry, the Moderator may cast a vote, thus creating a tie and defeating the motion. The Moderator's vote may be made after the "ayes" and "nayes" have been counted, but must be made before the Moderator declares the tally of "ayes" and "nayes." Should the Moderator choose not to preside over a particular matter, his status reverts to that of a Town Meeting Member.

Once a motion is in the possession of the Meeting, whether by a formal statement by the Moderator or informally by the commencement of debate, it may not be withdrawn without a majority vote or unanimous consent. If it is obvious to the Moderator that the Meeting is willing to have a motion withdrawn, the Moderator usually can dispose of the matter promptly by suggesting that unless there is an objection, it will be assumed that the motion may be withdrawn by unanimous consent.

It is the function of the Moderator to determine whether a motion is within the scope of an article, that is, whether the article in the Warrant gives notice to the voters of the subject

matter that will be discussed. Whenever there is any question concerning this, the Moderator will often seek advice of the Town Counsel. Since it is the customary practice of Needham Moderators to go over the Warrant and the proposed motions with the Town Counsel prior to the Town Meeting, such questions can usually be anticipated, and the benefit of Town Counsel's advice already obtained. An unanticipated question of scope may arise, however, with respect to an amendment to a main motion that is proposed by a Town Meeting Member during discussion. In any event, in the last analysis the responsibility is that of the Moderator.

Scope is a substantive question rather than procedural. The basic rule may be stated as follows: "Since the purpose of the Warrant is to apprise the voters of the subject matter to be considered at the Meeting, all that is necessary is for the article to include a sufficient description of the subject matter to provide the voters with substantial and intelligent notice of the nature of the business to be acted upon." The article need not contain details of "an accurate forecast of the precise action which the Meeting will take." Matters incidental to and connected with the article are proper for consideration and action.

The words "or in any way act thereon", or a similar phrase in the article, may allow a more liberal interpretation of the article but they should not be relied upon to justify any action that is not reasonably relevant, nor consistent with past practice and tradition in Needham.

Sometimes, "or in any way act thereon" serves as a basis for the appropriation of money necessary to carry out a motion which is successful; or after a motion under an article has failed, as a basis for a new motion under the article.

E. Order of Precedence of Certain Motions

Motions are considered in order of their "precedence" or "rank". The custom observed in Needham is as follows

- To adjourn,
- To lay on the table,
- For the previous question,
- To postpone to a time certain,
- To commit, recommit or refer,
- To amend,
- To postpone indefinitely.

Motions to adjourn, to lay on the table or for the previous question shall be decided without debate."

Except for the motion to adjourn, which is called a "privileged motion," these motions are called "subsidiary motions."

(1) Motion to Adjourn
(not debatable - majority vote)

The word "adjourn" has been used indiscriminately to describe any action from a short recess to complete dissolution. The Moderator under the power to regulate the Meeting has the power to declare a short recess without motion. The authors of *Town Meeting Time* recommend that a distinction be made between "adjourned" and "dissolved"; that "adjourned" be confined to a temporary suspension of the Meeting, and that "dissolved" be used to refer to the final termination of the Meeting. This seems to be a valid distinction. If all the business of the Meeting is completed, however, an unqualified motion to adjourn will be treated as a motion to dissolve.

The importance of this motion to adjourn being given first rank under the By-Laws of Needham is that it obviates any parliamentary question as to its rank and when it can be made. Thus, if, at a late hour, the Town Meeting is struggling with an important question, the motion to adjourn can be made, and a hasty decision avoided.

Of course the motion to adjourn should fix a time and place for the adjourned meeting. If the business of the Meeting has not been completed, the Moderator should not accept the motion unless it specifies such a time and place.

(2) Motion to Lay on the Table
(not debatable - 2/3 vote)

When a "motion to lay on the table" is made after a main motion has been made, it may have one of two purposes: to temporarily defer debate, or to kill without further debate. If the motion to "lay on the table" carries, all pending motions go to the table with it. It is usually apparent to the Moderator whether the purpose is only to postpone debate or whether the purpose is to kill the article or motion involved.

If the purpose is only to delay debate, it is important for the Moderator to realize that a motion to adjourn is not in order until the motion which has been laid on the table is removed from the table and acted upon.

The authors of *Town Meeting Time* state that "through the years the motion to lay on the table has lost its original purpose of temporarily deferring a debate, and has come to be used as a motion to kill without further debate. Accordingly, the Town Moderator should treat the motion as one made to suppress the debate and dispose of the question." Under such circumstances the authors of *Town Meeting Time* suggest a two-thirds vote should be required, and this procedure has been followed by the Moderators in Needham.

Except for the limited purpose of setting something aside to consider it later, such as a report, it seems better to use less ambiguous motions than the motion to lay on the table.

Thus, it seems that if the purpose is to defer debate, it is preferable to move to postpone until after a subsequent article or to a time certain, which can be done by majority vote. If the purpose is to cut off debate, then it seems that the motion for the previous question is preferable (requiring a two-thirds vote). If the purpose is to have a Committee do more study of the problem involved, then there should be a motion to commit or to refer to a Committee, which requires a majority vote.

(3) Motion for the Previous Question or "Calling the Question"
(not debatable - 2/3 vote)

The motion for the previous question is the method most frequently used to limit or cut off debate. Unlike the motion to lay on the table, it applies only to the motion immediately pending unless the movant specifically states that it shall apply to all pending motions. This motion, like the motion to adjourn, and the motion to lay on the table is decided without debate and requires a two-thirds vote. It is in effect a motion to terminate debate on the motion then pending and to bring it to a vote. If it fails to pass, then it may be put forward again if a reasonable time has passed and in the sole opinion of the Moderator there is reason to believe that the Members are ready to again entertain the motion.

(4) Motion to Postpone to a Time Certain
(debatable - majority vote)

A motion to postpone to a time certain is preferable to a motion to lay on the table when its purpose is merely to defer debate. The motion specifies a particular time during the Meeting when discussion on the pending motion is to resume, such as "immediately following final action on Article X." It should not specify a time on the clock, since it is not possible to predict with precision what the Meeting will be discussing at any particular moment. If the motion passes, the Meeting must remain in session until the "time certain" is reached.

(5) Motion to Commit, Recommit or Refer
(debatable - majority vote)

A motion to commit, recommit or refer may be made only when a main motion is pending, or when one or more subsidiary motions of lower rank, e.g., to postpone indefinitely or to amend, or incidental motions arising out of any of these, are pending. A motion to commit or refer should specify the Committee to which it is committed or referred, and, if necessary, by whom the Committee is to be appointed or elected, its makeup, and it should also contain an appropriation for the Committee's expenses, if appropriate.

(6) Motion to Amend
(debatable - majority vote)

A motion to amend may consist of adding, deleting or substituting words in the motion to be amended. The main motion must always be acted upon after a motion to amend. The motion to amend requires only a majority vote regardless of the vote required on the main motion. A motion to amend is itself subject to a motion to amend, which is called a secondary amendment. This secondary amendment may not itself be amended, but after it has been acted upon, a new secondary amendment may be offered. No more than one primary and one secondary amendment may be pending at one time. A secondary amendment is voted on before the primary amendment, and, of course, the primary amendment before the main motion. If circumstances or logic require, the Moderator may decide to alter the order of presentation of the amendments.

Usually the motion to amend is applied to a main motion or to another motion to amend, but it may be applied to motions to commit, to postpone to a time certain or to limit debate.

(7) Motion to Postpone Indefinitely
(debatable - majority vote)

A motion to postpone indefinitely under strict parliamentary procedure should be made only while a main motion, and no other, is pending. A motion to postpone indefinitely cannot be amended. In Needham, this motion is treated like a motion to dismiss and has a meaning that no action be taken under this article. In Needham, the motion to dismiss is often offered as a main motion by a Town official and usually indicates that those who inserted the article in the Warrant now consider no action is called for.

(8) Motion to Reconsider
(debatable - majority vote)

Motions for reconsideration have traditionally been viewed with caution in Needham. We have no By-Law governing this motion and thus the propriety of such a motion is decided, in the first instance, by the Moderator. It is difficult to request reconsideration without appearing to use the opportunity to re-argue the substance of the matter before reconsideration is voted, so it falls on the Moderator to rule whether the statements made in favor of reconsideration are necessary. A reasonable period of time must also, in the judgment of the Moderator, have passed such as a recess. New evidence or new developments must be cited by the movant and if put to the floor, the Motion must carry by a majority.

F. Other Factors

(1) Proposition 2½

The annual tax levy in Massachusetts is limited by G.L. c.59, § 21C ("Proposition 2½"). Some Moderators have taken the position that they will not allow a motion, or amendment to a motion, that would have the effect of increasing the total appropriations for a fiscal year to be raised by taxation above the levy limit. Since the annual tax levy is determined only in part by the appropriations made by Town Meeting, with assessments such as those made by the MBTA or MWRA, the overlay determined by the Assessors and certain other items (which may or may not be known at the time of the Annual Town Meeting) also affecting the annual tax levy, Needham Moderators have taken the position that they will not rule an appropriation motion out of order only because it might cause the limit to be exceeded. It is also noted that only the Selectmen are empowered by the statute to call an election to consider an override of the Proposition 2½ levy limit. Our Moderators have considered it inappropriate for either the Town Meeting or the Moderator to take action to deny the Selectmen the exercise of their prerogative to call an override election in order to balance the budget. The Moderator should, however, call upon the Finance Committee or other appropriate official to warn the Meeting of the potential effect of a motion that might cause the limit to be exceeded.

(2) Action on Articles Which May Be Illegal

It is likely that on occasion articles will be inserted in the Warrant which are of doubtful legal validity, and an objection as to their validity may be made to the Moderator. It is the view of the Massachusetts Moderator's Association that the Moderator should allow the Town Meeting to proceed on the article, and rely upon the proper authority, such as the Attorney General's Office or the Department of Revenue, to declare the action illegal. It is often appropriate for the Moderator to request the opinion of Town Counsel as to the legality of a doubtful motion.

(3) To Dissolve or Adjourn Sine Die

In Town Meetings, a motion to dissolve the meeting (or "to adjourn without day"), is not in order as long as any article in the Warrant remains undisposed of. As pointed out earlier, a motion merely to adjourn should fix a time and place for the adjourned meeting. If all the business of the meeting is completed, however, an unqualified motion to adjourn will be treated as a motion to dissolve.

V. PREPARING FOR TOWN MEETING - A MATTER OF "HOMEWORK"

Contributed by James Hugh Powers

How well any session of Town Meeting progresses, and how long the Town Meeting as a whole lasts, depends in significant degree upon how well the various town departments, town officials, citizen groups sponsoring warrant articles, and Town Meeting Members do their homework before the Town Meeting convenes. A productive Town Meeting is the product of a community effort and community cooperation.

A. The Moderator

Obviously, the fairness, firmness, tactfulness and political skills of the Moderator, well exercised, create a climate conducive to civil discourse, expeditious completion of business before the Town Meeting, and, on the whole a productive Town Meeting.

Politically, and in terms of parliamentary expertise, his task is to help the Town Meeting deliberate adequately upon the business before it, and to "get to where it wants to go" in an orderly and lawful manner, guided in legal questions by the Town Counsel.

From town to town, Moderators differ in their concepts as how best to serve these responsibilities, in their style, and in their approach to their homework.

In some towns, they see their role as akin to that of the President of the State Senate or the Speaker of the State House of Representatives with a partisan function of sorts. In Needham, this concept of their job(s) has been long rejected by our Moderators, (for decades.) especially since the institution of our Representative Town Meeting in 1932-34.

Moderators in Needham have tended to regard the Meeting as a business meeting and their role as more like that of a judge presiding over a courtroom, presiding over what is happening on the floor of Town Meeting, but refraining from involvement as a partisan of one cause or another. They see their role, like that of a judge, as a "facilitator" that may, in rare instances encourage conflicting parties to seek a compromise of their differences which will spare Town Meeting a bitter and protracted debate, with potential negative impacts (on the Town) down the road. Moderators have varied in their style as to when to play such a "facilitator" role, and how.

There is no "set" format for Town Meetings, so that Meetings vary greatly town to town. So do the practices of moderators vary. The Moderator's "homework" also includes keeping himself apprised of developments in the community which will affect the proceedings of the Town Meeting. He must know who the "players" are, and where they are coming from, so that he can cope with events on the Town Meeting floor.

B. The Selectmen and Town Counsel

How long a Town Meeting lasts also depends on how well the Selectmen fulfill their responsibility of arranging the succession of Town Meeting Warrant articles in a logical and efficient order. By doing so appropriately, the Selectmen can minimize the need to take such articles up out of order during the Town Meeting through reconsideration or otherwise, or making it necessary to revisit articles under the concluding "omnibus" article at the end of the Town Meeting Warrant.

An important part of the Selectmen's "homework", politically, is two fold.

First, they are in a position to act as "facilitators" to achieve agreements and compromises among conflicting groups in respect to controversial articles proposed for inclusion in a Town Meeting Warrant, or later included in it. If they perform this facilitator function successfully, the Moderator's job will be greatly eased and the Town Meeting members will be able to do their job better in less time.

Second, aided by the Town Counsel, the Selectmen can also strive to see that all proposals submitted for inclusion as articles in a Town Meeting Warrant are (1) conformable to state and federal laws and regulations and (2) clearly drawn. This will spare the Town Meeting confusion, and the risk of being plunged into esoteric legal debates difficult for lay Town Meeting Members to grasp.

The Town Counsel is available to all authors of proposed Warrant articles, to help them draft those articles properly and to assist them in preparing the motions they wish to offer in relation to them. (He is also available to Town Meeting Members to help them in drafting motions they may wish to offer) on any Warrant article up for consideration. If motions are properly drafted, the Town Meeting will not have to be delayed while properly phrased motions are being redrafted.

C. Town Meeting Members

Town Meeting Members must also do their own homework in a variety of ways.

They should obtain from the Town Clerk's office copies of two booklets, one of which contains our Town Charter and General By-Laws, the other the Zoning By-Law, and should familiarize themselves with their contents. A Warrant article proposing an amendment to one by-law may impact other by-laws in ways not obvious from a reading of the Warrant article, the specific amendment of which is not proposed. Another necessary working tool, obtainable from the Town Clerk or Planning Board, is a zoning map of the Town. Zoning legislation affects the town's economy and the property rights of constituents of Town Meeting Members.

There is no substitute for preparation!! It is incumbent upon Town Meeting Members to read, prior to the opening of the Town Meeting, the Town Meeting Warrant, and all relevant reports and documents re business before the Town Meeting, which have been sent to them by the Town and by parties at interest.

Nothing so irritates Town Meeting Members as the failure of a colleague to read materials provided to him or her, and then take up the time of the Town Meeting posing questions the answers to which have already been sent to all Town Meeting Members.

Town departments and committees are, with rare exceptions, anxious to respond to inquiries of Town Meeting Members and other citizens, (in respect to business pending before the Town Meeting.) Veteran Town Meeting Members have found town officials very obliging. Simple questions can be addressed to the responsible town agency or committee chair by telephone. If the question is complex and, on its face, will require some checking by the staff of a department or committee, it is best to submit one's question in writing. This will enable the agency or committee to serve the Town Meeting Member or citizen better.

In this general connection, Town Meeting Members should avail themselves of the opportunity to attend public hearings and informational meetings arranged by Town departments, committees and other agencies, and by citizen organizations such as the League of Women Voters. Notice of official hearings is given in our local newspapers; which also report the time and place of other public meetings, seminars and conferences that may be arranged by citizen groups.

Our Town Library also offers access to a formidable body of information relative to the history of the Town, its governmental organization, and political and developmental issues in the Town. This is a very useful resource for town agencies, Town Meeting Members, and citizen organizations.

News articles, special articles, and letters to the editor, in our local newspapers, afford Town Meeting Members an opportunity to identify issues of importance. To voters of the Town generally, and to voters of their precincts in particular. Town Meeting Members should maintain contact with their constituents, and be good listeners.

The hallmark of an effective and respected Town Meeting Member is a conscientious attention to all issues pending before the Town Meeting, knowledge of the rules a diligent use of available informational sources, and being there on the floor of Town Meeting to assure a full and fair representation of the residents of their precincts who have placed their confidence in their Town Meeting Members.

Recommended Reading

1. *Town Meeting Time*, A Handbook of Parliamentary Law by Richard B. Johnson, Benjamin A. Trustman and Charles Y. Wadsworth
2. *Citizen's Primer in Town Meeting* by Kenneth Bresler (published by the Office of the Secretary of the Commonwealth)
3. Needham Town Charter and General By-Laws (published by the Town Clerk)
4. "A Guide to Financial Management for Town Officials" (published by the Massachusetts Department of Revenue, Division of Local Services - download for free at <http://commonwealth2.cam-colo.bbuplanet.com/dls/dor2.htm>)
5. "Everything You Always Wanted to Know About Levy Limits -- But Were Afraid to Ask -- A Primer on Proposition 2½" (published by the Massachusetts Department of Revenue, Division of Local Services - see website above)
6. Needham Zoning By-Laws (published by the Planning Board)
7. Mass. Gen. Laws c. 39 §10-18
8. Town of Needham Annual Report
9. Guide to Needham, Massachusetts (published in 1998 by the Needham League of Women Voters)
10. "Guide to Town Meeting" (brochure published by the Needham League of Women Voters)